

INTERROGATION LAW 2003
POST TELECOURSE REFERENCE GUIDE

Copyright 2003 California Commission on Peace Officer Standards and Training

Published August 2003

All rights reserved. No part of the contents of this telecourse reference guide may be reproduced or transmitted in any form or by any means without the written permission of the California Commission on Peace Officer Standards and Training (POST), with the following exception: California law enforcement agencies in the POST peace officer program and certified telecourse presenters are hereby given permission by POST to make unlimited copies for the purpose of law enforcement training in California.

All other individuals, private businesses and corporations, public and private agencies and colleges, professional association, and non-POST law enforcement agencies in-state or out-of-state may order the telecourse reference guide by calling (800) 441-POST.

For additional information contact:

California Commission on Peace Officer Standards and Training
TRAINING PROGRAM SERVICES BUREAU
1601 Alhambra Boulevard
Sacramento, CA 95816-7083
(916) 227-3913

TABLE OF CONTENTS

| | |
|---|-----|
| <i>Commissioners</i> | iii |
| <i>Telecourse Advisory Committee</i> | v |
| <i>Preface</i> | vii |
| Telecourse Goals | |
| Target Audience | |
| Telecourse Treatment | |
| <i>Telecourse Segments</i> | |
| Segment One: Miranda | |
| Learning Objectives | 1.1 |
| Segment Description | |
| <i>Miranda Requirements</i> | 1.2 |
| Segment Two: Juveniles | |
| Learning Objectives | 2.1 |
| Segment Description | |
| <i>625 Welfare & Institutions Code Advisement</i> | 2.2 |
| <i>Interrogation of Juveniles</i> | 2.3 |
| Segment Three: Statements | |
| Learning Objectives | 3.1 |
| Segment Description | |
| <i>Voluntariness of Statements</i> | 3.2 |
| <i>Conduct of Peace Officers</i> | 3.3 |
| <i>Volunteered Statements</i> | 3.4 |
| Segment Four: Approachability | |
| Learning Objectives | 4.1 |
| Segment Description | |
| <i>Approachability While in Custody</i> | 4.2 |
| <i>Approachability Outside Custody</i> | 4.3 |
| <i>Appendices</i> | |
| Appendix A: <i>Glossary</i> | |
| Appendix B: <i>Constitutionally-Protected Rights</i> | |
| Appendix C: <i>Miranda Process and Advisements</i> | |

INTERROGATION LAW 2003
POST Telecourse Reference Guide

Appendix D: *Miranda Waivers*
Appendix E: *Beheler Admonishment*
Appendix F: *Comparison of Fifth and Sixth Amendment Provisions*
Appendix G: *Approachability for Interrogation*
Appendix H: *Additional Resources and References*

COMMISSIONERS

Joe Flannagan, Chairman
Sergeant, Alhambra Police Department

James P. Fox, Vice-Chairman
District Attorney, San Mateo County

Leroy (Lee) Baca
Sheriff, Los Angeles County

Louis J. Blanas
Sheriff, Sacramento County

Patrick Boyd
Officer, San Jose Police Department

Marc Cobb
Sergeant, Long Beach Police Department

Ted Hunt
Officer, Los Angeles Police Department

Arthur Lopez
Chief, Oxnard Police Department

Rana Sampson
Educator/Trainer

Laurie Smith
Sheriff, Santa Clara County

Michael R. Yamaki
Public Member

Bill Lockyer, Attorney General
Ex Officio Member

Kenneth J. O'Brien
Executive Director

INTERROGATION LAW 2003
POST Telecourse Reference Guide

TELECOURSE ADVISORY COMMITTEE

| | |
|--------------------|--|
| Joel Carey | Deputy Attorney General, retired California Department of Justice |
| Scott Cornfield | Lieutenant San Jose Police Department |
| Frank L. Daley | President Institute of Criminal Investigation |
| Chris Figueroa | Detective II Los Angeles Police Department |
| Nick Flint | Behavior Analysis Training Institute Santa Rosa |
| Patrick Flood | Retired Sacramento County Sheriff's Department |
| Gary Jimenez | Lieutenant San Francisco Police Department |
| Patricia Lenzi | Deputy District Attorney Yolo County |
| Barbara S. Moulton | Detective II Los Angeles Police Department |
| Rachelle Newcomb | Deputy Attorney General California Department of Justice |
| Valerie Richards | Deputy District Attorney Napa County |
| Lee Seale | Deputy Attorney General California Department of Justice |

INTERROGATION LAW 2003
POST Telecourse Reference Guide

| | |
|---------------|--|
| Ted Voudouris | Instructor Interview & Interrogations Institute |
|---------------|--|

| | |
|----------------|---|
| Greg Yacoubian | Lieutenant Los Angeles Police Department |
|----------------|---|

TELECOURSE PRODUCTION

| | |
|-----------|--|
| Jody Buna | Executive Producer California Commission on Peace Officer Standards and Training |
|-----------|--|

| | |
|----------------|--|
| Jo Ann Crystal | Co-Producer/Instructional Designer Crystal Educational Design Montgomery Village, Maryland |
|----------------|--|

| | |
|---------------|---|
| Dennis McNabb | Co-Producer/Director Colorburst Images Carlsbad |
|---------------|---|

PREFACE

Problems or barriers to obtaining admissible statements are not necessarily the result of lack of knowledge of the law. All law enforcement officers are aware of their obligation to advise suspects regarding their Miranda rights. Confusion and misunderstanding arises with the *application* of the law under varying circumstances they may or may not confront daily.

Although specific laws and rights will be identified, the primary thrust or intent of this telecourse will be the enhancement of the viewer's *critical thinking skills* as they apply to the application of interrogation law. This will be done by providing challenges in the form of numerous open-ended, scenario-based segments. Viewers will then be able to support or contrast their own critical thinking with that of subject matter experts.

Telecourse Goals

The primary goals of this telecourse are to:

- ☐ raise awareness of the constitutional and legal boundaries of investigative interrogation of a suspect,
- ☐ present opportunities for peace officers to exercise critical thinking and reasoning skills when presented with given applications of the law, and therefore
- ☐ aid peace officers in obtaining legally admissible evidence and confessions.

Target Audience

It is critical to the quality of instructional materials that a specific target audience be identified and materials be developed consistently with that audience in mind. Materials developed without a clear focus or for mass audiences (e.g., the entire peace officer population) often become convoluted and confusing and lack real instructional substance.

The primary target audience for this telecourse will be individuals who are currently employed as *field patrol peace officers*. Although information presented

will be targeted primarily to this level, it will also be of interest and applicable to follow-up investigative personnel.

Telecourse Treatment

The telecourse will be divided into four distinct 20-30 minute segments. All four segments may be viewed at one sitting or separately (e.g., during roll call or separate training sessions). Each segment will cover key issues regarding interrogation law. They are presented in a scenario/tutorial format with primary emphasis given to the *application* of the issues just presented. Questions will be posed to the viewer directly and answers/clarifications will be provided by subject matter experts.

This reference guide also provides additional references in the form of appendices that may be used by individual instructors to promote further consideration and discussion.

Segment One: MIRANDA

Learning Objectives

After examining this segment, viewers will be able to:

- identify the two *conditions* under which a Miranda admonishment must be given as:
 - custody for Miranda purposes, and
 - interrogation.
- recognize *custody for Miranda purposes* as any situation where, from the viewpoint of a reasonable third person, a suspect is aware that he/she has been formally arrested or has had his/her freedom restrained to a degree associated with a formal arrest.
- define *interrogation* as any questioning or conduct that is reasonably likely to elicit an incriminating response from a suspect.
- administer *Miranda warnings* in the most appropriate manner, reading directly from an approved Miranda card.
- distinguish between the following kinds of waivers of one's Miranda rights:
 - *Express waiver* (i.e., After having received and understood his/her Miranda rights, the suspect gives a clear "yes" answer when asked whether he/she is willing to go forward with the interrogation.)
 - *Implied waiver* (i.e., After having received and understood his/her Miranda rights, the peace officer begins the interrogation without asking if the suspect is willing to go forward, and the suspect goes ahead and answers the officer's question.)
 - *Conditional waiver* (i.e., After having received and understood his/her Miranda rights, the suspect agrees to go forward but places limitation or qualification on answering a peace officer's questions.)

Segment Description: *Miranda Requirements*

Segment One of the telecourse contains one scenario. Throughout the scenario, viewers are presented with a number of thought-provoking questions about what they have just seen. Instructors may wish to discuss each question as it is posed, or continue with the scenario to hear comments provided by subject matter experts.

The scenario begins as peace officers are called to an urban residence to investigate a fire involving a parked vehicle. A witness tells one officer he saw a guy “messaging around” the car just before the fire began. Although he doesn’t know the guy personally, he identifies a man who lives in a nearby house. Officers go to the man’s home to question him about the incident. At the end of their interview, the man agrees to come by the police station the next day for further questioning. The scenario pauses and the following questions are posed to the viewer.

- *Upon initial contact with the suspect, would the officer’s questioning of the suspect be a form of interrogation?*
- *Should the officers have advised the suspect of his Miranda rights during this initial contact?*

The following day, the man meets with a different investigating officer. The officer explains that the suspect is not under arrest and is free to leave at any time. During the questioning, the officer confronts the suspect with information regarding the witness and other evidence. Eventually, the suspect makes a statement that may be considered incriminating. As the interrogation progresses, the suspect becomes frustrated and announces that he wants to leave. The investigating officer allows him to do so. Again, the scenario pauses, and questions are posed to the viewer.

- *While in the interrogation room, is the suspect in custody for Miranda purposes?*
- *When the suspect begins to offer incriminating statements, is the detective obligated in any way to advise the suspect of his Miranda rights before continuing?*
- *The suspect is allowed to end the interrogation and leave the police station.*

Even if there was enough to charge him with a crime, is there any advantage to allowing him to leave the police station at this time?

During the course of the investigation, a search warrant is issued and evidence seized from the suspect's home. The suspect is asked to return to the police station again for further questioning. Instead of being told he could leave any time, he is read his Miranda rights. As the scenario is concluded, final discussion questions are posed to the viewer.

- *Was the Miranda admonition administered appropriately by the investigating detective?*
- *Was it clear that the suspect had waived his rights to remain silent or to have an attorney present?*

Before concluding this portion of the telecourse, instructors may wish to offer their own questions or topics for discussion as well as review specific agency policies and procedures regarding the requirements of Miranda.

Segment Two: JUVENILES

Learning Objectives

After examining this segment, viewers will be able to:

- distinguish between the requirements of California's Welfare and Institutions Code Section 625 and Miranda.
- recognize that a juvenile's rights and protections under the Fifth and Fourteenth Amendments are the same as those of adults.
- recognize that a parent or legal guardian cannot waive or invoke a juvenile's constitutional rights.
- explain why asking to speak with a parent or legal guardian is not the same as invoking one's right to counsel under the Fifth Amendment.

Segment Description

Segment two of the telecourse contains two scenarios, each addressing the rights of juveniles and Miranda protections.

First Scenario: 625 Welfare and Institutions Code Advisement

While on patrol, an officer stops a minor for a curfew violation. He asks the young woman for her name and what she is doing in that neighborhood at that time. He explains that he is taking her into custody and asks the minor to get into the patrol vehicle. When the minor asks if she is being arrested, the officer responds by saying no, she will be cited and that her parents will be called to pick her up. Just before driving away, the officer informs the minor of her rights under the Fifth Amendment. At this point, the minor becomes confused and frightened and says, "Why are you telling me that? That's what cops tell people who are arrested. You said you weren't arresting me!"

Throughout the scenario, viewers are presented with a number of thought provoking questions about what they have just seen. Instructors may wish to discuss each question as it is posed, or continue with the scenario to hear

comments provided by subject matter experts. Questions include:

- *When the juvenile is placed in the patrol vehicle is she in custody for Miranda purposes?*
- *Could any of the officer's actions or questions be considered interrogation?*
- *Why is the officer informing the juvenile of her Fifth Amendment rights after placing her in the patrol vehicle?*
- *Is the officer obligated to seek any type of acknowledgment of waiver of the juvenile's rights?*
- *Does it make any difference when the 625 advisement is given to a minor?*

Second Scenario: Interrogation of Juveniles

A young boy is being questioned at the police station regarding possession of a handgun on school property. The interrogating officer begins by building a rapport with the boy. He asks about school and family and if he knows why he has been brought to the police station. His questions clearly relate to determining the level of understanding the boy has regarding right and wrong and his actions at the school.

Before asking further questions specific to the incident, the officer advises the boy of his Miranda rights. When asked if he understands, the boy requests clarification which is provided by the officer. When asked if he was willing to waive his rights and talk to the officer, the boy announces that he isn't sure and wants to talk to his mom.

The scenario pauses and viewers are presented with a number of questions about what they have just seen. Instructors may wish to discuss each question as it is posed, or continue with the scenario to hear subject matter experts discuss the topic. Questions include:

- *Are a juvenile's rights under the Fifth Amendment any different than the rights of an adult?*
- *Is the technique used to give the Miranda admonition any different when*

speaking to a juvenile than to an adult?

- *Is asking to speak with the parent the same as invoking one's Miranda right to counsel?*

The scenario continues with an excited and agitated woman arriving at the police station. She states that she just got a call that her son was brought to the station. She demands to see him and be with him. When she is told that her son is being questioned at the moment by an officer, she demands that she be allowed to be with him and says that she wants an attorney. She wants all questioning to stop until the attorney arrives. At this point the scenario ends and the following questions are posed to the viewer.

- *Does a parent or legal guardian have a right to be with a child during a custodial interrogation of the juvenile?*
- *Can a parent decide if a child should answer an officer's questions or invoke to have an attorney present during a custodial interrogation?*

Before concluding this portion of the telecourse, instructors may wish to offer their own questions or topics for discussion. They may also choose to review specific agency policies and procedures regarding the administration and timing of the 625 Welfare and Institutions Advisement, and the rights and privileges of juveniles during custodial interrogation.

Segment Three: STATEMENTS

Learning Objectives

After examining this segment, viewers will be able to:

- recognize when *force, threats or promises*, express or implied, on the part of a peace officer could be interpreted as coercing an individual to make involuntary statements during a custodial interrogation.
- identify steps peace officers can take to ensure that their actions, questions, or comments are not interpreted by the suspect as *coercion* during a custodial interrogation.
- justify why, although lawful, the use of *subterfuge or deception* may not be an appropriate technique for a peace officer to use during a custodial interrogation.
- indicate specific actions peace officers can take to ensure that a *waiver of suspect's Miranda rights* is voluntary and admissible in court.
- recognize actions peace officers must take when, during custodial interrogations, suspects choose to *invoke* their rights to:
 - remain silent, and/or
 - have an attorney present before or during questioning.
- identify conditions under which *statements volunteered freely* by a suspect outside of Miranda are admissible as evidence.

Segment Description

Segment three of the telecourse contains three scenarios; each addressing a different aspect of the voluntariness of statements made during custodial interrogation.

First Scenario: *Voluntariness of Statements*

A suspect and his pregnant girlfriend arrive at a police station for questioning regarding a shooting. The suspect has been taken to an interrogation room for questioning. The scenario begins with the peace officer building rapport and asking preliminary interview questions. When the suspect is asked if he knows why he's there, he replies that he is not sure.

Throughout the scenario, viewers are presented with a number of thought provoking questions about what they have just seen. Instructors may wish to discuss each question as it is posed, or continue with the scenario to hear subject matter expert comments. Questions include:

- *Since it is the officer's intent to interrogate the suspect, should the suspect have been advised of his Miranda rights at the beginning prior to any questioning?*
- *Should an officer read a suspect his Miranda rights just to play it safe in case there is ever an issue at a later time?*

In the course of the interrogation, the suspect is read his Miranda rights. His response to whether or not he waives his rights is vague and he responds freely when the officer continues to ask him questions. The interrogation continues and the officer explains that the young man and his girlfriend are suspects in the shooting after presenting evidence of their involvement. The officer implies that if the suspect does not tell the truth, his girlfriend could be arrested and his child could be born in jail. The suspect asks, "If I confess, are you saying my girlfriend walks? And, if I don't, we both get buried by the system?" The officer responds by telling him the courts usually respect honesty and things could go easier.

Eventually, the suspect makes an initial admission. Questioning continues with the interrogating officer referring to the treatment the man's girlfriend may receive and to his child being born in jail. The scenario ends with the officer asking the

suspect if he had ever heard the saying, “The truth shall set you free.”

As the scenario ends, additional questions are posed to the viewers.

- *Has the interrogating officer resorted to any form of coercion or threats in order to obtain incriminating statements from the suspect?*
- *Since there was no Miranda admonishment required, does it make any difference that coercive tactics were used?*
- *Is it lawful to deliberately lie to a suspect in order to obtain an incriminating statement?*
- *Can statements such as “the truth shall set you free” be considered a form of coercion?*
- *If the interrogating officer suspects that a statement, question, or action could be misinterpreted by the suspect as coercion or a misleading promise, is there anything that officer can do to rectify the situation and therefore not jeopardize the voluntariness of a suspect’s statement?*

Second Scenario: Conduct of Peace Officers

An officer is in the process of interrogating a woman at the police station regarding the physical abuse of her child. Eventually the suspect, clearly upset, invokes her right to silence and asks for an attorney. Frustrated, the officer leaves the room and returns with a file folder. He says nothing but pulls out a number of gruesome pictures of the victim and throws them down on the table in front of the suspect. He then sits down and, although he remains silent, he glares at the suspect. After a few moments, the suspect blurts out that she “didn’t mean to hurt her.”

Viewers are presented with a number of thought-provoking questions about what they have just seen. Instructors may wish to discuss each question as it is posed, or continue with the scenario to hear subject matter experts’ comments.

Questions include:

- *Has the suspect given a clear and voluntary waiver of her Miranda rights?*
- *Can the interrogating officer lawfully ask the suspect why she does not want*

to speak with him? Does his question violate the requirement to cease all interrogation once the right to silence has been invoked?

- At what point did the officer cease the interrogation in this scenario?*
- Could the interrogating officer be held criminally or civilly liable for any of his actions during the interrogation?*

Third Scenario: Volunteered Statements

A suspect has been arrested, advised of his rights, and is now being transported to jail by a single officer. While underway, the suspect brags about how “experienced” he is and says he knows how the officer can’t ask him any questions. He continues to bait the officer by saying it must be really tough not being able to “get a confession out of him” and “be a hero.” He says he’s going to make it up to the officer by giving him one “free question.” The officer can ask him anything he wants and he’ll answer it freely and truthfully.

The officer responds by saying, “OK... were you the one who shot the guy?” The suspect answers with detailed and incriminating statements.

Again, viewers are presented with a number of thought-provoking questions about what they have just seen. Instructors may wish to discuss each question as it is posed, or continue to hear statements from subject matter experts on the topic. Questions include:

- Could the suspect’s statement be considered voluntary under the Fourteenth Amendment?*
- Was the peace officer’s question a form of interrogation?*
- If the suspect had not been advised of his Miranda rights and waived them at the time of arrest would the statements made to the transporting officer be admissible in court?*
- Under the circumstances shown, was there anything the transporting officer could have done to ensure that any statements the suspect volunteered would be admissible as evidence?*

INTERROGATION LAW 2003
POST Telecourse Reference Guide

Before concluding this portion of the telecourse, instructors may wish to offer their own questions or topics for discussion. They may also choose to review specific agency policies regarding interrogation procedures and techniques to ensure the admissibility of a suspect's statement as evidence.

Segment Four: APPROACHABILITY

Learning Objectives

After examining this segment, viewers will be able to:

- differentiate between the role of an attorney as it applies to a suspect's Fifth and Sixth amendment rights,
- identify at what point a suspect's Sixth Amendment right to counsel first applies during the judicial process,
- recognize the conditions under which a peace officer may reinitiate questioning of a suspect while the suspect is in custody or outside of custody, and
- describe the importance of accuracy and completeness of investigative reports as they apply to a peace officer's ability to conduct an interrogation of a suspect.

Segment Description

Segment Four of the telecourse contains two scenarios; each addressing the reinitiation of questioning of a suspect by peace officers.

First Scenario: Approachability While in Custody

A suspect has previously been arrested and arraigned for the crime of armed robbery. While in custody, he was advised of his Miranda rights and invoked his right to remain silent. Because he was not able to make bail, the suspect remained in custody.

The scenario begins five days later when officers from a different jurisdiction arrive at the jail. They request to speak to the investigating officer about the suspect. A number of similar armed robberies have taken place in their jurisdiction and they suspect that they may have been committed by the same man. When asked about Miranda, the original investigating officer checks and informs the other officers that the guy "invoked Miranda."

At this time, the scenario pauses and viewers are presented with a number of questions about what they have just seen. Instructors may wish to discuss each question as it is posed, or continue with the scenario to hear a discussion of the topics by subject matter experts. Questions include:

- *Are there any Fifth Amendment/ Miranda issues if the detectives from the different jurisdiction are allowed to question the suspect at this time about the robberies that took place in their area?*
- *Prior to questioning the suspect, are the detectives from the different jurisdiction required to inform the suspect of his Miranda rights again?*
- *If the suspect had invoked his right to counsel when previously read his Miranda rights, would this prevent the detectives from the different jurisdiction from questioning the suspect at this time?*

The scenario begins again with the initial investigating detective informing the visiting detectives that the suspect had previously invoked his right to remain silent and that an attorney had been appointed at arraignment. The scenario ends with the visiting detectives asking to speak with the suspect.

The following questions are posed to the viewers.

- *Does the fact that the suspect has already been arraigned for the initial crime impact on whether or not the detectives can approach him now regarding different crimes?*
- *Would questioning at this time be a violation of the suspect's Sixth Amendment rights?*

Second Scenario: Approachability Outside Custody

A suspect has been previously arrested and arraigned on a charge of child molestation. While in custody, the suspect had waived his Miranda right to remain silent and agreed to speak with officers. When the scenario begins, the suspect is home again, out on bail. Two officers are assigned to investigate another incident that is very similar and go to the man's home. When they ask to come in and ask a few questions, the suspect hesitates. One of the officers immediately begins asking the man questions about his possible involvement in

the later case. The man interrupts and informs the officers that he's got an attorney now and the attorney has told him not to talk to any officers. The officers inform the man that he respects his right to have an attorney to defend him for the first crime, but that they are there to ask questions about a completely different crime. The suspect agrees to allow the officers to come in and speak with him.

Instructors may wish to discuss each question that is posed to the viewer at this time or continue with the scenario to hear responses of subject matter experts. Questions include:

- *Have the officers violated the suspect's Fifth Amendment rights by approaching him for questioning at this time?*
- *Is there any violation of the suspect's Sixth Amendment right to the aid of counsel by the officers?*
- *During questioning, if the suspect gives any statements that implicate his guilt in the original crime, could those statements be used against him in court?*

Before concluding this portion of the telecourse, instructors may wish to offer their own questions or topics for discussion. They may also choose to review specific agency policies regarding reinitiating questioning of a suspect both in and outside custody.

APPENDIX A: Glossary

Key vocabulary terms are listed below with the definitions as they apply to this telecourse.

| | |
|---|---|
| Admission | Acknowledging certain facts that tend to incriminate the individual, but fall short of a full confession (<i>POST Regular Basic Course Student Workbook, LD 30: Preliminary Investigation</i>) |
| Arrest | Taking of a person into custody, in a case and in the manner authorized by law (<i>California Penal Code Section 835</i>) |
| Coercion (to give a statement) | Use of force (physical or mental), threats or promises (express or implied), or psychological pressure, sufficient to overcome a suspect's free will to admit, deny, or refuse to answer a question. (<i>California Peace Officers Legal Sourcebook</i>) |
| Coercion (to waive Miranda rights) | Any cajoling, trickery, or pressure by peace officers to get a suspect to waive his or her Miranda rights. |
| Conditional waiver | After the suspect has received and understood his/her Miranda rights, the peace officer begins the interrogation without asking if the suspect is willing to go forward, and the suspect answers the officer's question. (<i>California Peace Officers Legal Source Book; POST Regular Basic Course Student Workbook, LD 30: Preliminary Investigation</i>) |
| Confession | Acknowledging the commission of all elements of a crime. (<i>POST Regular Basic Course Student Workbook, LD 30: Preliminary Investigation</i>) |
| Custodial interrogation | Any direct questioning, or <i>conduct</i> which is the functional equivalent of direct questioning, that is reasonably likely to elicit an incriminating response from a suspect while the suspect is in custody for Miranda purposes (<i>California Peace Officers Legal Sourcebook</i>) |
| Custody for Miranda purposes | A formal arrest or its "functional equivalent" (i.e., freedom restrained by a peace officer's words or actions to a degree associated with a formal arrest) (<i>California Peace Officers Legal Source Book</i>) |

INTERROGATION LAW 2003
POST Telecourse Reference Guide

| | |
|--|---|
| Detention | A peace officer's assertion of authority over a person, by words or conduct, that would cause a reasonable person to believe that he or she is not free to leave or not cooperate. <i>(California Peace Officers Legal Source Book)</i> |
| Express waiver | After having received and understood his/her Miranda rights, the suspect gives a clear "yes" answer when asked whether he is willing to go forward with the interrogation. <i>(California Peace Officers Legal Source Book)</i> Note: If a suspect answers "no", there is NO kind of waiver, but rather an express invocation of the right to silence. |
| Implied waiver | After having received and understood his/her Miranda rights, the peace officer begins the interrogation and the suspect freely answers the officer's question. <i>(California Peace Officers Legal Source Book)</i> |
| Interview | The process of gathering information from a person who may have personal knowledge of the facts which an officer will need to conduct an investigation <i>(POST Regular Basic Course Student Workbook, LD 30: Preliminary Investigation)</i> |
| Interrogation | Any direct questioning, or <i>conduct</i> which is the functional equivalent of direct questioning, that is reasonably likely to elicit an incriminating response from a suspect <i>(California Peace Officers Legal Sourcebook)</i> |
| Invoke Miranda | To ask for an attorney or to refuse to answer questions, just before or at any time during custodial interrogation <i>(California Peace Officers Legal Sourcebook)</i> |
| Miranda warnings (admonishment) | A set of procedural safeguards set forth by the US Supreme Court which act to ensure that statements obtained from a suspect during custodial interrogation will be admissible at trial without violating the suspect's Fifth Amendment rights against self-incrimination. <i>(California Peace Officers Legal Sourcebook)</i> |
| Waive | To knowingly and voluntarily give up a right, constitutional or otherwise |

APPENDIX B: Constitutionally-Protected Rights

A confession is the most compelling evidence of a suspect's guilt. However, a confession or admission that violates the person's constitutional protections and statutory requirements can be ruled inadmissible as evidence and greatly jeopardize the state's position.

The United States Supreme Court has upheld the inadmissibility of statements (i.e., admission, confessions) that were obtained in violation of the following three Amendments included in the Bill of Rights of the United States Constitution.

| | Text | Provisions |
|------------------------|--|---|
| Fifth Amendment | <i>"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."</i> | <ul style="list-style-type: none">• Right to be informed of charges when held to answer for a serious crime• <i>Protection from compelled self-incrimination</i> in any criminal case• Due process before federal legal actions• Freedom from being tried twice for the same crime (i.e., double jeopardy) |

INTERROGATION LAW 2003
POST Telecourse Reference Guide

| | | |
|-----------------------------|---|--|
| Sixth Amendment | <i>“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”</i> | <ul style="list-style-type: none">• Right to a speedy trial• Right to a public trial by an impartial jury• Right to be informed of charges• Right to confront witnesses• <i>Right to the aid of counsel</i> during a criminal prosecution |
| Fourteenth Amendment | <i>“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”</i> | <ul style="list-style-type: none">• Right of citizens not to have a state limit federal privileges and immunities• Right to due process before being deprived of life, liberty, or property in state proceedings• <i>Right to equal protection of the law</i> in state proceedings |

Reference: *POST Regular Basic Course Student Workbook, Learning Domain #2: Criminal Justice System*

APPENDIX C: *Miranda Process and Advisements*

The purpose behind Miranda is to provide a mechanism (i.e., advisements) for neutralizing the “inherently compelling pressures” which exist during custodial interrogation so that any statement a suspect makes can be introduced against him/her at a criminal trial without violating his Fifth Amendment provision against self-incrimination.

There are three elements in the Miranda process. They are: giving of the Miranda advisements by the officer; understanding the advisements by the suspect; and waiving or invoking of Miranda rights (i.e., right to silence and/or right to have counsel present) by the suspect.

| Process | Advisement |
|-----------------------|--|
| Advisements | <ul style="list-style-type: none">– You have the right to remain silent. Do you understand?– Anything you say may be used against you in court. Do you understand? |
| Understanding | <ul style="list-style-type: none">– You have the right to the presence of an attorney before and during any questioning. Do you understand?– If you cannot afford an attorney, one will be appointed for you, free of charge, before any questioning, if you want. Do you understand? |
| Waiver/ Invocation | <p>If you desire an express waiver, ask a “yes” or “no” question, such as:</p> <ul style="list-style-type: none">• Do you want to talk about what happened?• Do you want to tell your side of the story?• Do you want to go ahead and talk to me? |

INTERROGATION LAW 2003
POST Telecourse Reference Guide

Suggested Spanish version of Miranda advisements:

| Process | Advisement |
|-----------------------|---|
| Advisements | <ul style="list-style-type: none">– Usted tiene el derecho a permanecer callado. Entiende?– Caulquier cosa que usted diga puede ser usada en su contra en una corte de ley. Entiende?– Usted tiene el derecho de tener un abogado presente antes de y durante que se le haga calquier pregunta. Entiende?– Si usted no tiene con que pagarle a un abogado, se le dara uno sin costo (gratis) antes de que se le haga cualquier pregunta, si lo desea. Etiende? |
| Understanding | |
| Waiver/ Invocation | <p>If you desire an express waiver, ask a “yes” or “no” question, such as:</p> <ul style="list-style-type: none">• Quiere hablar de lo que’ sucedio’?• Quiere decir su version de la historia?• Quiere proseguir y hablar connmigo? |

References: *California Peace Officers Legal Sourcebook*
POST Regular Basic Course Student Workbook, Learning Domain #15: Laws of Arrest

APPENDIX D: *Miranda* Waivers

In order to be valid, a suspect's waiver of Miranda rights must be:

- *voluntary* - The product of a free and deliberate choice rather than intimidation, coercion or deception.
- *knowing and intelligent*- The suspect must fully comprehend the advisements. (i.e., understand the nature of the rights as well as the consequences of waiving them)

A valid waiver of rights may be either express, implied, or conditional.

| Waiver | Suspect Actions | Example(s) |
|-------------|--|---|
| Express | With understanding of the warnings, the suspect: <ul style="list-style-type: none">• answers yes/no question about going forward with interrogation. | The peace officer asks, "Do you want to talk about what happened?" The suspect answers "yes." |
| Implied | With understanding of the warnings, the suspect: <ul style="list-style-type: none">• exhibits conduct indicating waiver of rights. | The peace officer begins asking questions immediately after giving Miranda warnings, and the suspect responds by answering without objection. |
| Conditional | With understanding of the warnings, the suspect: <ul style="list-style-type: none">• is willing to go forward but places limitations or qualifications on answering questions. | The suspect: <ul style="list-style-type: none">– answers the peace officer's questions but refuses to give a written statement; or– answers some questions but not others, or– refuses to speak to one specific officer but will with another; or– refuses to answer questions until a specific amount of time has passed. |

References: *POST Regular Basic Course Student Workbook, Learning Domain #15: Laws of Arrest*
California Peace Officers Legal Sourcebook
Joel Carey, Deputy Attorney General

INTERROGATION LAW 2003
POST Telecourse Reference Guide

This page intentionally blank.

APPENDIX E: *Beheler* Admonishment

In order to obtain a statement which will be admissible at trial, Miranda advisements must be given if the person about to be questioned is in custody for Miranda purposes.

Custody for Miranda purposes exists when:

- the person has been formally arrested, or has had his freedom of movement restrained to a degree associated with a formal arrest, *and*
- the person is personally *aware* of this lack of freedom, or reasonably believes it exists.

The question of awareness must be assessed objectively, that is, from the point of view of a reasonable third person. Therefore, neither the thoughts of the actual person nor the undisclosed thoughts of the officer make any difference.

At locations *other than a police station*, custody for Miranda purposes will not exist unless the suspect has actually been arrested or subjected to equivalent restraints, such as handcuffs or placement in the back of a police vehicle. In other words, a simple detention----not being free to leave—is not sufficient, without more, to constitute custody for Miranda purposes. Therefore, to help establish the lack of custody in these situations, before interrogating a detainee you should say:

- “*You are not under arrest. Do you understand?*”

On the other hand, detaining someone *at a police station* is enough to create custody for Miranda purposes. Therefore, at a police station, you should tell the suspect, in a believable way: “You are *free to leave or not answer any questions* at any time. Do you understand?” Then you may proceed with interrogation without the need for Miranda warnings.

References: *Beheler* (1983) 463 US 1121, 1125
Joel Carey, Deputy Attorney General

INTERROGATION LAW 2003
POST Telecourse Reference Guide

This page intentionally blank.

APPENDIX F: *Miranda and Sixth Amendment Provisions Regarding the Right to Counsel*

There is often confusion between the right to counsel that is provided by the Sixth Amendment and the right to counsel provided by the Miranda decision (which relates to the Fifth Amendment). This confusion may be eliminated with a clearer understanding of the fundamental purpose behind each provision.

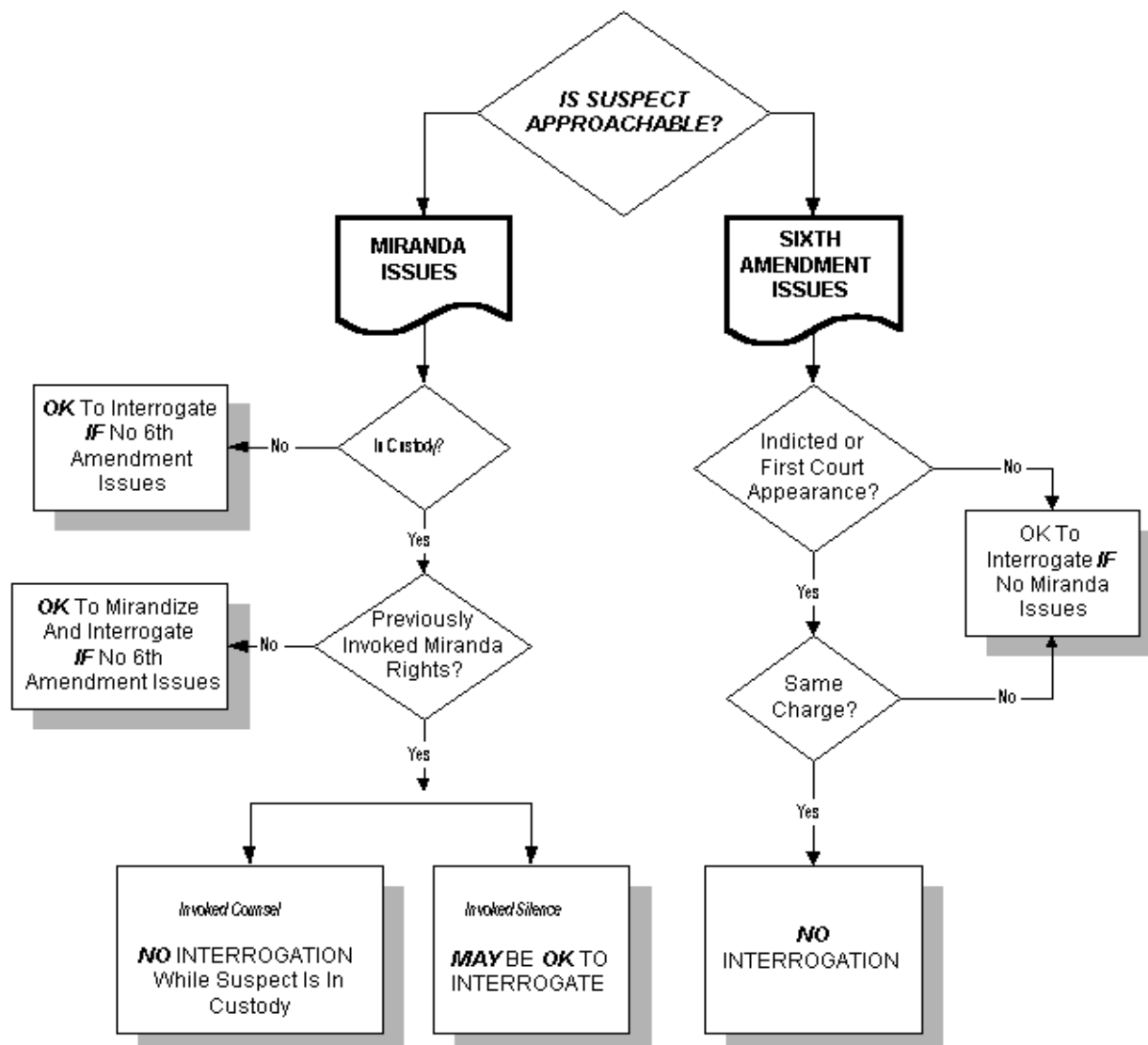
| | Miranda | Sixth Amendment |
|---------------------------|--|---|
| Purpose | Provides a mechanism for neutralizing “inherently compelling pressure” which exists during custodial interrogation by an agent of the government (i.e., law enforcement officer) | Provides that “the accused shall ... have the assistance of counsel for his defense” in a criminal case once “adversarial judicial proceedings” have commenced |
| Additional Considerations | <ul style="list-style-type: none">• Created by the U.S. Supreme Court in 1966• Allows counsel to be present to advise a suspect <i>if</i> that suspect: A: is in custody for Miranda purposes, <i>and</i> B: about to be interrogated by a government agent. (i.e., peace officer)• Applies only if suspect is <i>aware</i> that he is being interrogated by a government agent• Ensures that statements a suspect makes during custodial interrogation may be used against him at trial without violating his Fifth amendment privilege against self-incrimination | <ul style="list-style-type: none">• Provides a lawyer to assist a <i>charged defendant</i> to deal with the “intricacies of substantive and procedural law”• Attaches at the time an individual is indicted by a grand jury <i>or</i> makes his first court appearance on a criminal complaint or information• Relates only to the offense that has been formally charged• Has absolutely nothing to do with the existence of <i>custody</i> |

References: *California Peace Officers Legal Sourcebook*
Joel Carey, Deputy Attorney General

INTERROGATION LAW 2003
POST Telecourse Reference Guide

This page intentionally blank.

APPENDIX G: Approachability for Interrogation



INTERROGATION LAW 2003
POST Telecourse Reference Guide

This page intentionally blank.

APPENDIX H: Additional Resources and References

California Law

- ***California Penal Code Section 26***
Children under the age of 14 are capable of committing crimes if there is clear proof that they knew the wrongfulness of their actions.
- ***California Welfare and Institutions Code Section 625***
Temporary custody of a minor by a peace officer without a warrant; advising the minor of his/her rights.
- ***California Welfare and Institutions Code Section 627(a)***
Immediate steps must be taken to notify a minor's parent, guardian, or a responsible relative when a peace officer takes custody of a minor.

Case Cites

- ***Miranda v. Arizona (1966) 384 U.S. 436***
If a suspect is in custody and is subject to interrogation, the suspect must be advised of his/her right to remain silent and to have counsel present, appointed free of charge if necessary.
- ***People v. Hector (2000) 83 Cal. App.4th 288***
Asking for a parent to be present during a custodial interrogation may or may not be the same as invoking one's right to counsel, depending on all the circumstances.
- ***California v. Beheler (1983) 463 U.S. 1121***
Custody for Miranda purposes exists if a suspect is formally arrested or has his/her freedom restrained to a similar degree and he/she is aware of this lack of freedom or reasonably believes it to exist. Custody for Miranda purposes is automatic at a police station unless a person in the suspect's place would objectively believe he/she is free to leave.
- ***Texas v. Cobb (2001) 532 U.S. 162***
The right to the aid of counsel during criminal prosecution is offense specific. It does not apply to any other offense for which the suspect has not yet been indicted for.

INTERROGATION LAW 2003
POST Telecourse Reference Guide

- *People v. Jacobo (1991) 230 Cal. App.3d 1416; People v. Dela Pena (9th Cir. (Guam) 1995) 72 F.3d 767; People v. Mickle (1991) 54 C.3d 140*

Fifteen minutes to thirty six hours may be reasonably contemporaneous under certain circumstances to reinitiate questioning without having to re-Mirandize the suspect

Other

- **Commission on Peace Officer Standards and Training (POST)**
Training Program Services Bureau
1601 Alhambra Boulevard
Sacramento, CA 95816-7083
- **California Department of Justice**
Office of the Attorney General
1300 I Street, Suite 1101
P.O. Box 944255
Sacramento, CA 94244-2550